

## Proving Authority and Capacity; or “WHO” can SIGN “WHAT”

Montana Notary Conference 2014

By:

Lydia B Gomes  
LBGomes & Associates  
Farmers State Bank  
406-642-2251

---

---

---

---

---

---

---

---

## Agenda

- \* ESTATES
- \* TRUSTS
- \* CONSERVATORSHIPS
- \* POWER OF ATTORNEY
- \* OVERVIEW OF BUSINESS ENTITIES
- \* Web Resources

---

---

---

---

---

---

---

---

## Estates:

### Naming a Personal Representative

- ♦ A person or institution named in a will or appointed by the court to settle an estate.
- ♦ Duties: pay bills, sells property, disburses assets, complete taxes and closes estate

### Establishing Identity

- Letters of Testamentary/Administration (Appointment)
- →Read thru the document. Only person(s) listed in document may be signer(s). Look for any conditions or restrictions.
- Make note in Journal of review of letters
- ID signer

---

---

---

---

---

---

---

---

**FILED**  
THIRD JUDICIAL CLERK  
NOV 23 2012

Montana Twenty First Judicial District Court, Ravalli County  
In the Matter of the Estate of [REDACTED]  
Case No. DP-13-02  
DEED  
LETTERS

The Will of [REDACTED] having been admitted to probate and [REDACTED] was appointed as Personal Representative of said Will and Estate, by Order in the above proceeding dated November 22nd, 2012.

Letters of Appointment as such Personal Representative are hereby issued, as provided by law.

WITNESS the Clerk of the Court above named and the seal of the Court affixed this 23rd day of November, 2012.

DEBBIE HARMON, Clerk of Court  
(COURT SEAL) DONICA M. WRIGHT, Deputy Clerk  
STATE OF MONTANA }  
COUNTY OF RAVALLI }

I, [REDACTED], hereby accept the duties of Personal Representative of the Will

and Estate of [REDACTED] deceased, and do solemnly swear that I will perform, according to law, the duties of Personal Representative of the Estate of [REDACTED] deceased.

Signed and sworn to before me this 23rd day of November, 2012.

[Signature]

STATE OF MONTANA }  
COUNTY OF RAVALLI }

I hereby certify that the Letters to which this certificate is affixed are a true and correct copy of the original as kept and filed in the office of the Clerk of the District Court and that the same are in full force and effect.

WITNESS my hand and the Seal of the District Court of Ravalli County this 23rd day of November, 2012.

DEBBIE HARMON, Clerk of Court  
(COURT SEAL)

Clerk of the District Court  
Montana 21st Judicial District  
Ravalli County Courthouse  
201 Bedford  
Hamilton, MT 59840

**FILED**  
PUBLIC TRUSTEEN CLERK  
JUN 8 7 2013

Montana Twenty First Judicial District Court, Ravalli County  
In the Matter of the Estate of [REDACTED]  
Case No. DP-13-09  
Department No. 1  
DEED  
LETTERS OF APPOINTMENT  
FROM INTESTATE ESTATE

Appointments of the Public Trustee, Jennifer B. Lint, Esq., as Special Administrator for the estate of the above-named decedent having been granted by order in the above proceeding dated the 24th day of May, 2013.

Letters of Appointment as such Special Administrator are hereby issued as provided by law.

WITNESS the Clerk of Court above named and the seal of the Court affixed this 7th day of June, 2013.

(COURT SEAL) Paige Treutwein, Clerk of Court  
JUDY STEVENS, Deputy Clerk

STATE OF MONTANA }  
County of Ravalli }

I, Jennifer B. Lint, Esq., hereby accept the duties of Special Administrator of the Intestate estate of [REDACTED] deceased, and do solemnly swear that I will perform, according to law, the duties of Special Administrator of the Intestate estate of [REDACTED] deceased.

Signed and sworn to (or affirmed) before me on 7th day of June, 2013 by Jennifer B. Lint, Ravalli County Public Trustee.

[Signature]

STATE OF MONTANA }  
COUNTY OF RAVALLI }

I hereby certify that the Letters to which this certificate is affixed are a true and correct copy of the original as kept and filed in the office of the Clerk of the District Court and that the same are in full force and effect.

WITNESS my hand and the Seal of the District Court of Ravalli County this 7th day of June, 2013.

PAIGE TREUTWEIN, Clerk of Court  
(COURT SEAL)

## Trusts

A legal arrangement in which property is held by one party for the benefit of another. Revocable or irrevocable

### Players in a trust:

- Grantor – creates the trust; Trustee – Manages the trust (holds legal title); Beneficiary – individual(s) receiving benefit from trust

### Types of Trusts

- Intervivos – “Living Trust” or a trust that operates while the grantor is alive.  
→ In a living trust the grantor, trustee and beneficiary can be the same person

Testamentary Trust – Created by a will  
→ Need court documents

### Establishing Identity

- Documents needed:
- Trust Agreement – go through it and find:  
→ The name and date of trust  
→ The powers: who can do what → Who can sign on behalf → Make note in Journal of reviewing docs  
ID of signer

## Conservatorships

An individual appointed by the court to manage estate/assets of a person (adult or minor). Reasons: advanced age, illness, injury or mental illness is unable to care for him/herself.

### Some other stuff:

- Conservator appointed by Probate Court
- Conservator manages the property of individual
- Must report to the court
- A Guardianship gives an individual control over the physical condition of a person; Conservatorship manages the assets. So in most proceedings there is both a guardianship and conservatorship.

### ESTABLISHING Identity:

- Documents needed:
- Letters of Conservatorship/Letters of Authority
  - Names who can sign on behalf--Who is incapacitated or incompetent person--Any conditions
- ID Signer

## Power of Attorney

Authorizes a person (agent/attorney-in-fact) to undertake specified acts for another person (principal or grantor).

- **Durable:** POA remains valid when principal loses mental or physical capacity.
- **Nondurable:** POA becomes invalid when principal loses the capacity of managing his/her affairs (mentally/physically)
- All power of attorneys cease upon death of principal!

### \*TYPES OF ATTORNEYS

- General Power of Attorney (MCA regulated)
- Bank (financial) Power of Attorney
- Medical Power of Attorney

\*Completing a jurat certificate with a POA is a compliance issue. POA cannot take oath for principal—exception is MT title work.

### Power of Attorney Form- from MCA

**72-31-353. Statutory form power of attorney.** A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this part.

#### MONTANA STATUTORY FORM POWER OF ATTORNEY IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3.

This power of attorney does not authorize the agent to make health care decisions for you. You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions. This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions. If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

**DESIGNATION OF AGENT**

I .....  
 (Name of Principal)  
 name the following person as my agent:  
 Name of Agent: .....  
 Agent's Address: .....  
 Agent's Telephone Number: .....

**DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

If my agent is unable or unwilling to act for me, I name as my successor agent:  
 Name of Successor Agent: .....  
 Successor Agent's Address: .....  
 Successor Agent's Telephone Number: .....  
 If my successor agent is unable or unwilling to act for me, I name as my second successor agent:  
 Name of Second Successor Agent: .....  
 Second Successor Agent's Address: .....  
 Second Successor Agent's Telephone Number: .....

**GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3:  
 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)  
 (...) Real Property  
 (...) Tangible Personal Property  
 (...) Stocks and Bonds  
 (...) Commodities and Options

(...) Banks and Other Financial Institutions  
 (...) Operation of Entity or Business  
 (...) Insurance and Annuities  
 (...) Estates, Trusts, and Other Beneficial Interests  
 (...) Claims and Litigation  
 (...) Personal and Family Maintenance  
 (...) Benefits from Governmental Programs or Civil or Military Service  
 (...) Retirement Plans  
 (...) Taxes  
 (...) All Preceding Subjects

**LIMITATION ON AGENT'S AUTHORITY**

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included this authority in the Special Instructions.

**SPECIAL INSTRUCTIONS (OPTIONAL)**

You may give special instructions on the following lines: .....

**EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

**NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:  
 Name of Nominee for conservator or guardian of my estate: .....  
 Nominee's Address: .....  
 Nominee's Telephone Number: .....  
 Name of Nominee for guardian of my person: .....  
 Nominee's Address: .....  
 Nominee's Telephone Number: .....

**RELiance ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

**SIGNATURE AND ACKNOWLEDGMENT**

\_\_\_\_\_  
 Your Signature Date \_\_\_\_\_ State of \_\_\_\_\_  
 Your Name Printed \_\_\_\_\_ County of \_\_\_\_\_  
 Your Address \_\_\_\_\_ This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
 Your Telephone Number \_\_\_\_\_

## Sole Proprietor

An individual engaged in a business without benefit of associates or a corporate charter.

- **Benefits:**

- X Simple to set up
- X No legal requirements for establishment
- X No fees to maintain
- X Total control with owner

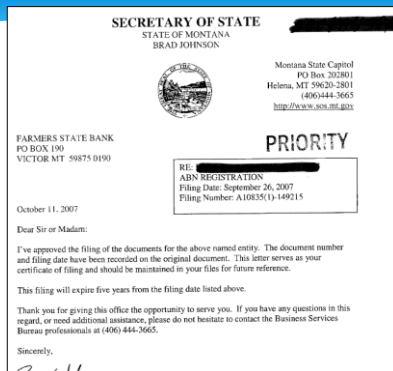
- **Drawbacks:**

- X No identity from owner
- X Owner has unlimited liability for business
- X Ownership is limited to one person

- **Items to consider:** Assumed Name (DBA)

- **Documents Needed:** Assumed Business Name Registry

- **Patriot Act Identifiers:** Identify individual (owner)




---

---

---

---

---

---

---

---

## General Partnerships

A general partnership is created when two or more persons agree to create a business and to jointly own assets, profits and losses.

- **Benefits:**
  - X Can have more than one owner
  - X Is a very flexible form of business
  - X Avoids double taxation
  - X Has few legal formalities for maintenance
- **Drawbacks:**
  - X Partners have unlimited liability for losses
  - X Legally responsible for business acts of partners
  - X Partnership dissolves upon death of partner
  - X Interest cannot be sold or transferred w/o consent of all partners
- **Items to consider:** Partnership agreement
- **Documents Needed:** Partnership Agreement
- **Patriot Act Identifiers:** Identify all signing partners

---

---

---

---

---

---

---

---

## Limited Partnerships

A limited partnership consists of one or more general partners (who are liable for business) and one or more limited partners (liability is their invested funds).

- **Benefits:**
  - X Limited partners have liability protection
  - X Allows funds to be raised without giving up control
  - X Limited partners have accounting & inspection rights of all financials
- **Drawbacks:**
  - X General partners are exposed to unlimited liability
  - X Limited partners must be passive in daily operations
- **Items to Consider:** "Limited" - limited in control and liability, unless partner becomes involved in operations, then they automatically become subject to unlimited liability
- **Documents Needed:** Partnership Agreement (look for "general partners")
- **Patriot Act Identifiers:** Identify the signing general partner(s)

---

---

---

---

---

---

---

---

## Limited Liability Partnerships

- A special partnership agreement giving all partners the right to control but provides each partner with limited liability.
- **Benefits:**
  - X All partners have limited liability protection
  - X All partners receive partnership tax treatment
  - X Flexibility in splitting profit and loss
  - X More streamlined than Corp formation
- **Drawbacks:**
  - X All partners able to manage
  - X Unlike a General Partnership (which is Not regarded as an entity) LLP's must pay franchise tax
- **Items to consider:** LLP's and LLC's are NOT the same!
- **Documents Needed:** Partnership Agreement
- **Patriot Act Identifiers:** Identify the signing partners

---

---

---

---

---

---

---

---

---

---

## Corporations

- A legal entity which functions under the authority of its stockholders acting thru its Board of Directors
- **Benefits:**
  - X No individual liability of stockholders
  - X Not dependent on one player-will continue
  - X Ownership can easily be transferred
  - X Most stable of all business structures
- **Drawbacks:**
  - X Changes cannot be made quickly
  - X Little individual stockholder influence
  - X More regulation, taxation, reporting
- **Items to consider:** Formalities—Board; accounting; By laws; annual meeting; two types of stock
- **Documents Needed:** Articles of Incorporation (By Laws, Meeting Minutes—you need documentation stating who can sign on behalf of corp)
- **Patriot Act Identifiers:** Identify signers (President or Secretary)

---

---

---

---

---

---

---


---


---


---

SECRETARY OF STATE  
STATE OF MONTANA  
LINDA McCULLOCH


Montana State Capitol  
PO Box 202801  
Helena, MT 59620-2801  
(406)444-3665  
<http://www.sos.mt.gov>



  
CORVALLIS MT 59828

RE:   
ARTICLES OF INCORPORATION  
Filing Date: April 19, 2011  
Filing Number: D214390 - 120571

April 25, 2011

Dear :

I've approved the filing of the documents for the above named entity. The document number and filing date have been recorded on the original document. This letter serves as your certificate of filing and should be maintained in your files for future reference.

The first Annual Report must be delivered to the Secretary of State between January 1 and April 15 of the year following the calendar year in which a Domestic or Foreign Corporation or Limited Liability Company was incorporated or authorized to transact business. Subsequent Annual Reports must be delivered to the Secretary of State between January 1 and April 15 each year thereafter.

Thank you for giving this office the opportunity to serve you. If you have any questions in this regard, or need additional assistance, please do not hesitate to contact the Business Services Bureau professionals at (406) 444-3665.

Sincerely,

---

---

---

---

---

---

---

---

---

---

## Limited Liability Company

- A hybrid of a corp, general partnership and sole proprietor; full protection against personal liability without corp taxes.
- **Benefits:**
  - X Owners have unlimited liability protection
  - X No limit on number of owners
  - X Fewer formalities than S Corp
- **Drawbacks:**
  - X Can be easily dissolved
- **Items to consider:** **Managers;** are elected to run LLC **Members;** are owners of LLC
- **Documents Needed:** Articles of Organization –Look for managers/members or elected officers who sign on behalf of LLC
- **Patriot Act Identifiers:** Identify the signing manager/member/officer

---

---

---

---

---

---

---

---

## Notary Certificate

- \* State of Montana
- \* County of \_\_\_\_\_

This instrument was signed or acknowledged before me on \_\_\_\_ **Date** \_\_\_\_ by \_\_\_\_ **Name of Signer** \_\_\_\_ acting in the capacity of \_\_\_\_ **Title** \_\_\_\_ on behalf of \_\_\_\_ **Entity Name** \_\_\_\_.

\* \_\_\_\_\_  
Notary Signature

\* (stamp)

---

---

---

---

---

---

---

---

## Journal Entry

- \* Remember:
  1. Note type of document you viewed to support authorization (and date of document)
  2. Note ID of signer

---

---

---

---

---

---

---

---

## Website Resources

- Montana Code Annotated  
[http://leg.mt.gov/bills/mca\\_toc/](http://leg.mt.gov/bills/mca_toc/)
- MT Secretary of State  
<http://sos.mt.gov>
- MT Justice Dept  
<https://doj.mt.gov/>
- MontGuides  
  - <http://www.montana.edu/wwwhd/grg/montguides.html>

---

---

---

---

---

---

---

---

## Questions??

\* Thank You!

\* Lydia Gomes, Farmers State Bank, 406-642-2251

---

---

---

---

---

---

---

---